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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,424	08/05/2003	Yoshimi Tsujiyama	JCLA11962	7330
23900	7590	02/14/2006		
J C PATENTS, INC. 4 VENTURE, SUITE 250 IRVINE, CA 92618			EXAMINER	TORRES VELAZQUEZ, NORCA LIZ
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/635,424	TSUJIYAMA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Norca L. Torres-Velazquez	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 November 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3-7,11 and 12 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,3-7,11 and 12 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed November 28, 2005 have been fully considered but they are not persuasive.

a. Claim 1 has been amended to now recite "long non-elastomeric fiber" and to include the limitation that the fibers are manufactured "with a melt-blowing method or a spunbonding method".

The Examiner found no new matter in the amendment.

b. With regards to the Collier reference, Applicants argue that the reference fails to disclose and even teaches away the feature of a long non-elastomeric fiber because his elastic nonwoven fabric uses a short non-elastomeric fibers and his process precludes using a long non-elastomeric fiber.

It is noted herein that Applicants arguments indicating that the Collier reference uses short (staple size) non-elastomeric fibers introduced by merging a secondary gas stream containing the nonelastic fibers 64 with the stream of fibers 24 are correct. It is further noted that the nonelastic fibers are fed from a mat or batt. (Refer to Col. 13, lines 15-56) However, it is the Examiner's interpretation that while the reference presents such method as one of the embodiments of their invention, the disclosure does not preclude or teach away from the use of a different method or the inclusion of "long" fibers.

c. With regards to the prior art of Sisson, Applicants argue that the reference teaches away from the use of melt-blowing methods and spunbonding methods.

It is noted herein that the method described in Col. 7, lines 1-18 contrary to Applicant's assertion is indeed a spunbonding method. It is further noted that the relatively non-elastic filaments 22 and the relatively elastomeric filaments 24 are preferably continuous filaments extruded or melt spun, these may comprise in whole or in part, staple or cut length fibers. The bondings at the fiber crossings 26 are preferably autogeneous, that is, produced by the application of heat and pressure alone. However, solvent or adhesive bonding can be utilized without departing from the invention. (Col. 13, lines 36-46, 59-65)

d. Further, it is argued that even if Sisson and Collier were combined by hindsight, the elastic nonwoven fabric of this invention including a long non-elastomeric fiber formed with a melt-blown method or a spunbonding method still cannot be obtained, because Sisson teaches away to use a long non-elastomeric fiber formed with a melt-blown method or a spunbonding method and Collier substantially contains no embodiment that uses a long non-elastomeric fiber.

Is noted herein that the references of Sisson and Collier are analogous art between themselves as they belong to the same classification and they both relate to nonwoven materials that include elastomeric and non-elastomeric fibers. Further, it is noted that the nonwoven materials in both references are used in similar applications, such as disposable products (Refer to Col. 1, lines 18-25 of Collier; and Col. 2, lines 20-46 of Sisson). Therefore, it is the Examiner's position that the combination of the two references is proper and not in hindsight as stated by Applicants. As stated above, Sisson

discloses the use of a spunbonding method and while Collier discloses the use of staple length non-elastomeric fibers, the reference does not preclude the use of long fibers.

Further, it is the Examiner's interpretation that the use of long nonelastomeric fibers as an alternative to the staple length fibers of Collier would have been an obvious modification in view of the teachings of Sisson which discloses that the non-elastomeric filaments may also comprise in whole or in part, staple or cut length fibers as an alternative to the use of non-elastomeric fibers (long fibers). (Refer to Col. 13, lines 36-46 of Sisson). Therefore, the present claims are rejected herein over Collier in view of Sisson.

***Claim Rejections - 35 USC § 102/103***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 11 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over SISSON (US 4,209,563).

SISSON discloses a method of forming an elastic cloth structure comprising fibers of synthetic, organic, relatively elastomeric polymer and fibers of a synthetic, organic, elongatable but relatively nonelastic polymer. (abstract) The reference teaches the use of continuous filaments. (Col. 7, lines 54-60) The reference further teaches that up to about 90% of the material may be elastomeric, with the remaining as little as 10% non-elastic. (Col. 8, lines 49-50)

Although SISSON does not explicitly teach the claimed elongation recovery rate and separation resistance it is reasonable to presume that these properties are inherent to the elastic nonwoven web of SISSON. Support for said presumption is found in the use of like materials (i.e. an elastic nonwoven web made from spunbond fibers that include elastic and nonelastic fibers). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed properties of elongation recover rate and separation resistance would obviously have been present one the SISSON product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

5. Claims 1, 3-4, 6 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over COLLIER, IV et al. (US 5,260,126) in view of SISSON (US 4,209,563).

COLLIER, IV et al. discloses elastic nonwoven webs of fibers. The reference teaches materials suitable for use in applications such as disposable garments. (Col. 1, lines 24-26) The reference teaches that the elastic nonwoven web of fibers may be a web of meltblown fibers or spunbonded fibers. The elastic nonwoven web may also include at least one type of nonelastic fibers, for example nonelastic microfibers, which are distributed within or upon the matrix. If

nonelastic fibers are present in the elastic nonwoven web, the elastic nonwoven web may generally include from about 20 percent, by weight, to about 99 percent, by weight, of fibers formed from a styrene-poly (ethylene propylene)-styrene blend and from about 1 percent, by weight to 80 percent, by weight, of the nonelastic fibers. (Col. 5, lines 1-37) On Table 1 of the reference, some physical properties of the styrene-poly(ethylenepropylene)-styrene block copolymer used by the reference are disclosed. (Col. 7) With regards to the average diameter of the fibers and the relation of diameters between the elastomeric and nonelastomeric fibers, it is the Examiner's interpretation that the teaching of using micro fibers (of diameters of about 100 microns or less, for example, 0.5-50 microns) reads on the values claimed herein and therefore the relation of the diameters of the fibers would be expected from their teachings. (Refer to col. 2, lines 28-33) With regards to claim 6, it is noted that the reference teaches using their nonwoven in application such as pants, dresses, and blouses, among others. (Col. 1 lines 18-25)

COLLIER, IV et al. discloses the claimed invention except that it uses staple length non-elastic filaments instead of long nonelastomeric filaments,

SISSON discloses a method of forming an elastic cloth structure comprising fibers of synthetic, organic, relatively elastomeric polymer and fibers of a synthetic, organic, elongatable but relatively nonelastic polymer. (Abstract) SISSON teaches materials suitable for end uses such as "disposable" products. (Col. 2, lines 24-25) The reference teaches the use of continuous filaments. (Col. 7, lines 54-60) The reference further teaches that up to about 90% of the material may be elastomeric, with the remaining as little as 10% non-elastic. (Col. 8, lines 49-50) It is further noted that the reference teaches that the relatively non-elastic filaments need not

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necessarily comprise continuous filaments, and may, for example, comprise, in whole or in part, staple or cut length fibers. (Col. 13, lines 42-46)

Since both references are directed to elastic cloth structures suitable for end uses such as disposable garments, the purpose disclosed by SISSON would have been recognized in the pertinent art of COLLIER IV et al.

It is the Examiner's interpretation that the use of long nonelastomeric fibers as an alternative to the staple length fibers of Collier would have been an obvious modification in view of the teachings of Sisson which discloses that the non-elastomeric filaments may also comprise in whole or in part, staple or cut length fibers as an alternative to the use of non-elastomeric fibers (long fibers). (Refer to Col. 13, lines 36-46 of Sisson).

SISSON shows that a continuous filament (long) is an equivalent structure known in the art. Therefore, because these two materials were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the non-elastic staple fibers of COLLIER with the long non-elastic filaments of SISSON.

Although COLLIER, IV et al. and SISSON IV et al. do not explicitly teach the claimed elongation recovery rate and separation resistance it is reasonable to presume that these properties are inherent to the elastic nonwoven web from the combination of these two references. Support for said presumption is found in the use of like materials (i.e. an elastic nonwoven web made from spunbond or meltblown fibers that include elastic and nonelastic fibers). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed properties of elongation recover rate and separation resistance would obviously have been present once the elastic nonwoven product from the combination is

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provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102. Reliance upon inherency is not improper even though rejection is based on Section 103 instead of Section 102. *In re Skoner, et al.* (CCPA) 186 USPQ

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6. Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over COLLIER, IV et al. and SISSON as applied above, and further in view of ROMANEK (US 4,446,189).

The references are silent to laminating the nonwoven web.

ROMANEK is directed to a nonwoven textile fabric laminate that comprises at least one layer of nonwoven textile fabric laminated to an elastic layer. (Abstract, Figures 5-7)

Since both references are directed to elastic web materials, the purpose disclosed by ROMANEK would have been recognized in the pertinent art of COLLIER, IV et al and SISSON.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to laminate the elastic web to a textile fabric with the motivation of producing a high bulk textile product having elasticity or resiliency for use in such applications as wearing apparel to allow enhanced freedom of movement for the wearer of such apparel as disclosed by ROMANEK. (Col. 1, lines 10-16).

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Norca L. Torres-Velazquez  
Primary Examiner  
Art Unit 1771

February 9, 2006